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JUL 22 2010

OFFICE OF PETITIONS

In re Application of
Mitchell R. Swartz
Application No. 09/748,691
Filed: December 26, 2000

ON PETITION

This is a decision on the petition filed April 17, 2006 under 37 CFR 1.181(a)(3) requesting that the Director exercise his supervisory authority and overturn the decision of the Director of Technology Center 3600 (Technology Center Director), dated March 24, 2006, which maintained that the application was abandoned .

The petition is **granted to the extent indicated below**.

From the filing of the first appeal brief on July 3, 2003, the Technology Center required strict compliance with the requirements of paragraphs (c) of 37 CFR 1.192. 37 CFR 1.192, however, provided in July of 2003¹ that: "The brief shall contain the following items under appropriate headings and in the order indicated below **unless the brief is filed by an applicant who is not represented by a registered practitioner.**" See 37 CFR 1.192(c) (emphasis added). The appeal brief in this application was filed by a *pro se* applicant, there is no requirement that the appeal brief of July 3, 2003 strictly comply with the requirements of 37 CFR 1.192(c). Accordingly, the notices holding the appeal brief filed on July 3, 2003 non-compliant, and the decision to dismiss the appeal and hold the application abandoned for failure to timely file a compliant appeal brief, are withdrawn

This decision is based solely upon the provision in former 37 CFR 1.192(c) which excluded its application to an appeal brief filed by an appellant who is not represented by a registered practitioner. Nothing in this decision should be taken as an indication that the appeal briefs filed in this application comply with the requirements of 37 CFR 1.192(c) (or current 37 CFR 41.37(c)) or that there is any merit to the myriad of contentions presented in the petitions filed in this application. Petitioner is also advised that this decision does not preclude the Board of Patent Appeals and Interferences

¹ The requirements for an appeal brief are currently set forth in 37 CFR 41.37.

from treating the appeal briefs filed in this application in any manner it deems appropriate.

It is noted that the first Appeal Brief contained Appendix A of the claims; the second and third Appeal Briefs contained two Appendices, A and B, of the claims. While a *pro se* appeal brief is not required to include an Appendix section heading under MPEP 1206 and 37 CFR 1.192(c), it is noted that Appendix B in the second and third Appeal Briefs do not correspond to the finally rejected claims. Claims in Appendix B appear to correspond to the claims submitted in a proposed after final amendment filed March 28, 2003 that was denied entry in the Advisory Action dated April 15, 2003.

Accordingly, the application is being forwarded to the examiner for consideration of the third Appeal Brief filed February 3, 2004 using the claims set forth in Appendix A attached thereto.

Telephone inquiries concerning this decision should be directed to David Bucci at (571) 272-7099.

A handwritten signature in black ink, appearing to read 'RWB', is positioned above the printed name of Robert W. Bahr.

Robert W. Bahr

Acting Associate Commissioner for
Patent Examination Policy